

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

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FILE: B-210442**DATE:** September 2, 1983**MATTER OF:** Customs Inspectors - Overtime Compensation -
Aggregating Separate Periods of Overtime**DIGEST:**

Customs Service requests decision whether an inspector's overtime assignments from 9:30 p.m. to 10:30 p.m. Sunday, and from 12:45 a.m. to 1:45 a.m. Monday, may be considered continuous so as to limit his overtime entitlement to 1/2 day's pay for each assignment. We conclude that under current Customs regulations the Monday assignment is not a continuation of the Sunday assignment, and the inspector is entitled to 1-1/2 days' pay for the Monday assignment.

ISSUE

The issue in this decision involves whether a Customs inspector's overtime assignments from 9:30 p.m. to 10:30 p.m. Sunday and from 12:45 a.m. to 1:45 a.m. Monday may be considered continuous so as to limit his overtime entitlement under the provisions of 19 U.S.C. § 267, and the implementing regulations. For the reasons that follow, we hold that under existing regulations the Customs Service may not treat such assignments as continuous service.

BACKGROUND

This decision is in response to a request from the Honorable Alfred R. DeAngelus, Acting Commissioner of Customs, U.S. Customs Service. This decision is being handled under our labor-management procedures contained in 4 C.F.R. Part 22 (1983), and we have received comments on this matter from the National Treasury Employees Union.

This question involving an interpretation of the Customs Service regulations governing overtime entitlement arose from a grievance filed by a Customs inspector which was denied by the agency. The inspector worked on Sunday from 12 noon to 8 p.m., and from 9:30 p.m. to 10:30 p.m., and finally from 12:45 a.m. to 1:45 a.m. Monday. Under the applicable statute and regulations, he was paid 2 days' pay

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for the Sunday work from 12 noon to 8 p.m., and 1/2 day's pay for the work from 9:30 p.m. to 10:30 p.m. The issue in dispute is whether the work performed from 12:45 a.m. to 1:45 a.m. Monday shall be treated as a continuation of the services performed on Sunday (which would entitle the inspector to 1/2 day's pay), or as a separate claim for overtime work at night (which would entitle the inspector to 1-1/2 days' pay).

The Customs Service seeks to establish a national policy on what constitutes continuous overtime assignments and requests our decision whether a break in assignments of less than 2 hours between Sunday or holiday work and weekday work can be considered continuous service under the current regulations. Customs also questions whether breaks in assignments should be computed from when the overtime work was completed or from when the inspector was no longer available for service (overtime is compensated for on the basis of 2-hour increments). Finally, the Customs Service requests our decision whether this inspector is entitled to 1/2 day's pay or 1-1/2 days' pay for the overtime performed on Monday morning.

The Chief Counsel of the Customs Service is of the opinion that when there is a break in assignments between Sunday night and Monday morning (as in this case), the Monday assignment is not a continuation of the Sunday assignment. The Chief Counsel points out that Sunday is defined in the applicable regulations (19 C.F.R. § 24.16(h)) as midnight-to-midnight, and an assignment Monday morning cannot be considered Sunday service unless it is a continuation of an assignment begun on Sunday. Thus, the Chief Counsel concludes that this Customs inspector is entitled to 1-1/2 days' pay for the Monday assignment.

The Chief Counsel of Customs does agree that whether the assignment is continuous is computed from the inspector's availability, not from when the inspector's work actually ended. An inspector is paid for overtime on the basis of 2-hour increments with any fraction of 2 hours amounting to at least 1 hour to be counted as 2 hours. Thus, an inspector who works from 10 p.m. to 11 p.m., and then begins an assignment at 12 midnight, would be considered to be working continuously.

The National Treasury Employees Union provided comments on this matter and argues that the Monday assignment is separate and cannot be considered Sunday work except in that limited situation where the Monday assignment is a continuation of the Sunday work as suggested by the Chief Counsel of

Customs. The union also points out that under 19 C.F.R. § 24.16(f), broken periods of overtime are to be considered continuous for the purposes of overtime compensation. However, the union argues that the regulation is limited in this case to broken periods of overtime occurring before midnight Sunday and does not apply to an overtime assignment which begins Monday morning.

DISCUSSION

Customs inspectors are entitled to certain overtime compensation for overtime work between 5 p.m. and 8 a.m., or for work on Sundays or holidays under the authority of 19 U.S.C. § 267, which provides in pertinent part as follows:

"The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays * * * such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty * * *."

This additional compensation is paid by the shipper or carrier requesting the customs inspection to the Customs Service.

The implementing regulations contained in 19 C.F.R. § 24.16, provide in subsection (h) for the payment of 2 days' pay for the 8 hours the employee worked on Sunday from 12 noon to 8 p.m. This subsection also provides that service in excess of 8 hours on a Sunday or holiday shall be compensated "on the same basis as overtime services performed at night on a weekday." Thus, for service between 9:30 p.m. and 10:30 p.m., section 24.16(g) provides 1/2 day's pay for each 2 hours of compensable time, with service of at least 1 hour counted as 2 hours. See B-201789, October 20, 1981, 61 Comp. Gen. 33.

As the parties indicate, if the assignment on Monday is deemed a continuation of the work on Sunday, section 24.16(g) provides as follows:

"* * * if an employee performs overtime services during the night hours at the beginning of the next regular workday following a Sunday or holiday which overtime services are in continuation of an assignment begun on the Sunday or holiday immediately preceding such regular workday, the compensable time for the overtime services following such Sunday or holiday shall be the period between midnight of such Sunday or holiday and the conclusion of the overtime services."

Section 24.16(g) also provides a limitation on total compensation paid pursuant to the section during 1 night of 2-1/2 days' pay.

If the assignment on Monday is not considered a continuation of the Sunday overtime assignment, the parties agree that the Monday morning work would have to be considered as separate night work. Under 19 C.F.R. § 24.16(b), the word "night" means the time between 5:00 p.m. and 8:00 a.m., but "shall not include any such time within the 24 hours of a Sunday or holiday." Instead, "[t]he night hours at the end of the regular workday immediately preceding a Sunday or holiday and the night hours at the beginning of the next regular workday shall be considered for the purposes of this section as parts of a single night."

Compensable time for overtime services is computed under section 24.16(g) as follows:

"The reasonable rate of extra compensation for authorized overtime services performed by Customs employees at night on any weekday is hereby fixed at one-half of the gross daily rate of the regular pay of the employee who performs the service for each 2 hours of compensable time, any fraction of 2 hours amounting to at least 1 hour to be counted as 2 hours. The compensable time shall be * * * the period between the time the employee is assigned and reports for duty and the conclusion of the services, plus 4 hours, if the time of assignment is after the expiration of the first 4 and before the beginning of the last 2 hours of the night. * * *"

Thus, if the assignment is not continuous, the inspector in this case is entitled to a 4-hour "roll back" added to his assignment of 1 hour from 12:45 a.m. to 1:45 a.m. Monday, with the 5 hours of compensable time worth 3 one-half day's of pay, or 1-1/2 days' pay. See 37 Comp. Gen. 276 (1957).

We agree with the interpretation of the Chief Counsel of Customs and the union that in this situation the inspector's Monday assignment cannot be considered a continuation of the Sunday overtime work. With the inspector's assignment from 9:30 p.m. to 10:30 p.m., and with the concept of 2 hours compensable time for each overtime assignment of 1 hour or more, the inspector was considered available for duty only until 11:30 p.m. Absent language in the Customs regulations permitting aggregation in this situation, we do not consider an assignment beginning at 12:45 a.m. Monday to be a continuation from the assignment ending at 11:30 p.m. Sunday.

The Customs regulations do provide for the aggregation of overtime assignments in specific situations. For example, where an inspector performs work on a Sunday or holiday the rate of pay is applied "* * * whether it [the length of time] is served continuously or in broken periods, and whether it is served for one or more applicants. * * *" See 19 C.F.R. § 24.16(h), and B-201789, October 20, 1981, 61 Comp. Gen. 33. The only other reference to aggregation of assignments is contained in 19 C.F.R. § 24.16(f), which provides as follows:

"(f) Broken periods. When overtime services at night or on a Sunday or holiday are rendered in broken periods, the actual time each assignment began and ended shall be reported. Overtime services rendered in such broken periods shall be treated as though the services had been continuous except when the total of the compensation computed separately for each such period in accordance with the provisions of paragraphs (g) and (h) of this section is less than when computed as though the services had been considered continuous. For purposes of computing compensation, each time an employee is assigned and reports for overtime duty on a weekday or on a Sunday or holiday constitutes a separate broken period even though no services, or services of less than 1 hour, are actually rendered on such assignment. * * *"

We agree with the union's contention that section (f) does not permit the aggregation of overtime assignments as suggested by the Customs Service in this case. This section does not require that Sunday and Monday service be considered continuous for pay purposes, but rather that broken periods of overtime services at night, or on a Sunday or holiday, should be calculated as though continuous. Assignments on Sunday night and early Monday morning are not performed during the same "night" since under section 24.16(b), quoted above, the 24 hours of a Sunday or holiday are excluded from the definition of service at "night."

Accordingly, we conclude that the Customs Service may not under its current regulations aggregate overtime assignments with interruptions of less than 2 hours. Therefore, we hold that the Customs inspector in this case is entitled to 1-1/2 days' pay for the Monday overtime assignment.

As we stated in 37 Comp. Gen. 276, (1957) the statute authorizes the Secretary of the Treasury to "fix a reasonable rate of extra compensation", and we see no prohibition to Customs amending its regulations in order to aggregate overtime assignments where the interruption between assignments is less than 2 hours. As we noted on page 2 of this decision, we agree with the views of the Chief Counsel of the Customs Service as to the method for computing the length of the interruption. The breaks in assignments should be determined on the basis of the time for which the inspector is paid and must be available for duty.

for Harry R. Van Cleave
Comptroller General
of the United States